

## **Appeal to FCC**

September 7, 2019

Filed electronically via ECFS

### **RE: Request for Appeal of Commitment Adjustment Notification**

CC Docket No. 02-6

#### **Contact:**

Janice Meyers

Letter of Agency for The Academy Charter School

Janice Meyers Educational Consulting, LLC

1121 Park West Blvd. Suite B204

Mount Pleasant, SC 29466

Phone: 914-715-2466

BEN: 16055831

#### **Appeal of**

I am appealing the Commitment Adjustment Letter issued on July 12, 2019 stating

#### **“Funding Commitment Adjustment Explanation:**

During an Audit, the Auditors determined that this funding commitment must be rescinded in full. FCC Form 470 did not include the service(s) for which funding was sought in the FCC Form 471 application, which is a violation of the FCCs competitive bidding rules. The Beneficiary's FCC Form 470 did not contain sufficient information to enable bidders to reasonably determine that the Beneficiary was seeking bids for 300 Mbps and the Beneficiary did not demonstrate price was the primary factor in selecting a service provider. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support by submitting a complete FCC Form 470 to USAC web site for potential service providers to evaluate. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.”

#### **Background of Events**

- I received the audit request addressed to Mr. Wayne Haughton, Executive Director of The Academy Charter School on February 13, 2017.
- In a phone call to Christopher Smith at USAC on February 14, 2017, I told him that his timing could not have been worse. The 17-18 filing window had just

opened, I moved my office to a new location, I was going out of the country from 2/17-2/24, and the school was on Winter break for 2/20-2/24. Christopher said he was flexible.

- Entrance conference call was on Thursday February 16, 2017
- The Academy Charter School was granted an extension until 3/6/2017.
- When I returned from vacation I developed severe asthma and could not work until 3/10/17.
- Email from audit team on March 20, 2017 expressing the POSSIBILITY of site visit from Mid-April and Mid-June of 2017, saying they would work with us to finalize the actual dates.
- Email from Latrice on May 2, 2017 stating the site visit is Monday, June 12, 2017. Unfortunately, the National Charter School Conference was scheduled in Washington, DC from June 11-14, 2017 and the school management was scheduled to attend the conference (including Donna Douglas, Director of Operations). When asked for another date, Latrice told us that the letter from March 20, 2017 was sufficient notice even though the letter said she would work with us. She also said two other public school districts in the New York City area were scheduled that week. I attended the site visit on behalf of The Academy.
- The onsite meetings with the auditors took place on 6/12/17. We reviewed all the documentation and no issues were communicated. Latrice did not attend the site visit. I worked with Christopher Smith and Abbey Oluboyo.
- There were no additional requests from the auditors at the site visit.
- We responded to requested documents from 2/13-5/10/17, 8/22/17, then again on 4/30/18. During the 8 months from 8/22/17 to 4/30/18 we heard nothing.
- We did not have any communication from the auditors until April 30, 2018, when we received an email with Detailed Audit Findings. The audit timeline posted that the audit findings would be delivered by September 2017. These findings in April 2018, arrived 7 months after the promised timeline.
- On 5/8/2018 we emailed Win Himsworth, NY State E-Rate Coordinator seeking advice.

- On 5/9/2018, we addressed the issues raised in the findings in an email document to the auditors. Our impression was that the audit was still open and we would have the opportunity to respond to the DAF in the Beneficiary Response with additional documentation.
- On 9/25/2018 we received the final report.

### **Argument for FRN 1699035991**

Form 470 # 160005307 was certified on 12/7/2015 with an ACD of 1/4/2016. The Academy Charter School was seeking bids for Internet access at two locations for Fiber or Cable from 100-200 Megs. The Academy had a contract with Lightpath for 100/100 Megs of fiber that was due to expire on 6/30/2017. In 2013, Lightpath was the only vendor who had fiber in the ground at the school's location. The Academy found that 100 Megs of Internet was not enough bandwidth to sustain its 1:1 iPad program as well as online testing. This form 470 was in the first year of EPC, before the current drop-down menu for Internet access types. The narrative states "Internet access cable or fiber with managed router two school locations 2 or 3 year contract with escalation clause". There were three responses. Windstream quoted 100 Megs of Ethernet over Copper which is not expandable and not asked for in the 470. Both LightPath and Metro Optical quoted 150 and 300 Megs of Fiber Internet. When The Academy asked the vendors why they did not quote 200 Megs of Internet, the reply from both was that only 150/300/and 500 Megs was available. The Academy compared the 150 Megs of LightPath at \$2,200/month per site to Metro Optical at \$ 2,000/month per site. The Academy had experienced many outages with LightPath and found the customer service to be problematic. Because The Academy would be signing a three year contract, they decided that the 300 Megs of fiber would be a better solution at \$2,400/month per site. The \$1,000 surcharge for the new fiber install seemed minimal because it meant that LightPath would no longer be the only vendor in the area, and would create a competitive market. The Academy signed a three-year contract with Metro Optical on March 30, 2016.

The audit concluded that “the FCC 470 did not contain sufficient information to enable bidders reasonable determine that the Beneficiary was seeking bids for 300 Megs and the Beneficiary did not demonstrate that price was the primary factor in selecting a service provider”. We disagree. The Academy did carefully consider the costs of both LightPath and Metro Optical. At 150 Megs, Metro Optical was less expensive. At 300 Megs, both Lightpath and Metro Optical quoted the same price. The school selected the 300 Megs option, paying only an additional \$400/month more for double the bandwidth.

I met with Donna Douglas at The Academy Charter School on May 1, 2018 to respond to the DAF. It was only in meeting with Donna that she mentioned that she had a bid analysis for Internet but it was filed with the 2016 E-Rate forms not 2017.

My firm does not handle the bid analysis. It is the school’s responsibility to compete the analysis and chose a vendor. On a thorough search of the audit announcement letter and questions, I could not find the request for a “bid analysis”. Once I was giving access to the bid analysis, It included the Internet bid analysis in my response to the DAF.

### **The IAD response of 9/25/2018**

“If the Beneficiary's needs changes, the Beneficiary should resubmit a new FCC Form 470 and issue a revised Request for Proposal to ensure that all potential service providers understand the Beneficiary's needs and can submit a proper bid so the Beneficiary can assess whether each potential service provider's bid is cost-effective. Also, as stated in a note to paragraph (a) of 47 C.F.R. § 54.503, when the applicant's FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids, it results in an activity that would not result in a fair and open competitive bidding process.”

We argue that the Form 470 provided enough information to conduct a fair and open competitive bidding process. Both bidders stated that they did not offer 200 Megs of Internet only 150/300/500 Megs. The Academy acted in the spirit of the 7<sup>th</sup> Order and Report by seeking an upgrade in Internet speed to accommodate student usage of 1:1 devices at a reasonable cost.

“The Beneficiary only provided emails explaining its rationale for selecting Metro Optical, as outlined in the Condition section above. The Beneficiary never provided or suggested there was a spreadsheet that demonstrated its comparison of the service provider bids it received. Further, well before the Beneficiary received the written audit finding for review and response,

IAD informed the Beneficiary about the details of this audit finding. Even still, the Beneficiary never informed IAD that it had a bid analysis spreadsheet or any other documentation demonstrating that it conducted a bid evaluation comparing the price of eligible services. Now that the audit is complete, the Beneficiary is providing a bid analysis with its response to the written finding.”

Until I met with The Academy on May 1, 2018 I did not realize we had not submitted the bid analysis from 2016. It was difficult to keep track of what was submitted because, unlike in other audits, no spreadsheet of what has been submitted and was still required was set up. We also were not informed that the responses submitted at the onsite meeting would be the end of the audit. Normally, after the onsite visit there is another period of testing and notification of a last chance to submit responses.

Even upon our review of the Beneficiary's bid analysis spreadsheet, the bid analysis still does not demonstrate that the Beneficiary selected the most cost-effective service offering using price as the primary factor. First, the costs identified by the Beneficiary in the bid analysis are only one-half of the cost quoted by each service provider in their respective bids. Second, although the Beneficiary identifies Windstream as the cheapest service offering, Windstream was awarded the least favorable score in the cost criterion. Third, Lightpath and Metro Optical were awarded the same score in the cost criterion even though Metro Optical's quote (\$4,800 recurring + \$2,000 non-recurring) was more expensive than LightPath's quote (\$4,800 recurring + \$0 non-recurring). The Beneficiary's bid analysis does not demonstrate the Beneficiary conducted a fair and open competitive bidding process or selected the most cost-effective service offering using price of the eligible services as the primary factor.

The Academy completed the Internet bid analysis on a per site cost. Windstream was listed but did not comply with the Form 470 because they quoted 100 Megs of Ethernet over Copper (not scalable for increased bandwidth) not fiber or Cable as requested on the form 470. They were not considered. LightPath and Metro Optical were given the same score because the monthly reoccurring charges were the same. The cost of \$ 1,000 of installation over 36 month would be \$27.77/month. Even if Metro Optical was giving a score of 3.6 instead of 3.8, they would still have received the highest overall score. The Academy did select the most cost-effective vendor with price being the highest weight at 30%.

## **Conclusion**

This was a difficult and labor-intensive audit. The timing of the audit in conjunction with the opening of the filing window, February break, snow days, and Spring break added to the difficulty of submitting the responses. The Academy Charter School tried to comply with the request of the auditors. The initial document letter dated February 13, 2017 asked for initial responses to be provided in only two weeks. Asking the school to gather documents and answers to 112 questions in that short time frame seemed unreasonable. Most of the audits I have handled allow at least 30 days to submit the initial responses. The Academy never knew what the audit timeline was as it was not met on September 2017. Nevertheless, The Academy tried their best to comply. There was no fraud or abuse, simply unmet expectations.

The Academy Charter School respectfully asks that the SLD rescind the FRN recovery of FRN1699035991 in the amount of \$39,783.

Sincerely,

*Janice H Meyers*

Janice Meyers